No. 84-9 (16)

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1984

MASSACHUSETTS MUTUAL LIFE INSURANCE COMPANY,
and CECILIA STEVENSON,
Petitioners,
VS.
DORIS RUSSELL,
Respondent.

**On Writ of Certiorari
to the United States Court of Appeals
for the Ninth Circuit**

BRIEF OF THE BOARDS OF TRUSTEES OF THE NORTHERN CALIFORNIA CARPENTERS TRUST FUNDS, CEMENT MASONS TRUST FUNDS, LABORERS TRUST FUNDS, OPERATING ENGINEERS TRUST FUNDS AND CONSTRUCTION TEAMSTERS HEALTH AND WELFARE TRUST FUND AS AMICI CURIAE IN SUPPORT OF THE POSITION OF PETITIONERS

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QUESTION PRESENTED

Whether, under the Employee Retirement Income Security Act, a fiduciary of an employee benefit plan may be held personally liable to a plan participant or beneficiary for punitive damages or extra-contractual compensatory relief for improper or untimely processing of a benefit claim.

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This brief amici curiae is filed by the Boards of Trustees of the Northern California Carpenters Trust Funds, Cement Masons Trust Funds, Laborers Trust Funds, Operating Engineers Trust Funds and Construction Teamsters Health and Welfare Trust Fund (The "Northern California Trust Funds")[1] with the consent of all parties. Letters from counsel for the petitioners and respondent giving such consent have been filed with the Clerk of the Court.

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[1]The Northern California Trust Funds were all established under collective bargaining agreements through negotiations between contractor and builder associations and building trades unions to cover basic tradesmen performing work in the building and construction industry within the 46 Northern Counties of California. They presently consist of five health and welfare funds, four pension funds, two annuity funds, four vacation and holiday funds and two apprenticeship and training funds as follows: The Carpenters Health and Welfare Trust Fund for California, the Carpenters Pension Trust Fund for Northern California, the Carpenters Vacation and Holiday Trust Fund for Northern California, the Carpenters Annuity Trust Fund for Northern California, the 46 Counties Millwrights Annuity Trust Fund, the Cement Masons Health and Welfare Trust Fund for Northern California, the Cement Masons Pension Trust Fund for Northern California, the Cement Masons Vacation/Holiday Trust Fund for Northern California, the Cement Masons Apprenticeship and Training Trust Fund for Northern California, the Laborers Health and Welfare Trust Fund for Northern California, the Laborers Pension Trust Fund for Northern California, the Laborers Vacation-Holiday Trust Fund for Northern California, the Laborers Training and Retraining Trust Fund for Northern California, the Operating Engineers Health and Welfare Trust Fund, the Pension Trust Fund for Operating Engineers, the Pensioned Operating Engineers Health and Welfare Trust Fund, the Operating Engineers and Participating Employers Pre-Apprentice, Apprentice and Journeymen Affirmative Action Training Fund and the Construction Teamsters Health and Welfare Trust Fund for Northern California.

THE NATURE OF THE NORTHERN CALIFORNIA TRUST FUNDS AND OF THEIR INTEREST IN THIS CASE

The Northern California Trust Funds are collectively-bargained multiemployer employee benefit funds established and maintained pursuant to Section 302(c)(5) and (6) of the Labor Management Relations Act of 1947, as amended, 29 U.S.C. § 186(c), (5), (6). Each of the Funds is an employee benefit plan covered by the Employee Retirement Income Security Act, 29 U.S.C. § 1001 et seq., commonly known as ERISA.

The Funds, in the aggregate, have over 90,000 participants, who are employees engaged in the building and construction industry in the 46 Northern Counties of California, and over 5,000 contributing employers, who are also engaged in that industry. Each of the Funds is governed by a Board of Trustees composed of an equal number of employer representatives and employee representatives, each of whom serves without compensation from the Funds. The members of each Board have been designated as named fiduciaries who jointly have authority to control and manage the operation and administration of the employee benefit plan maintained by the Fund. One of the duties of the Board in the exercise of this authority is to receive and consider claims to benefits under the plan and to grant or deny such claims.

Because of the special characteristics of multiemployer employee benefit plans in the construction industry, the holding of the Court of Appeals in this case that a fiduciary of a plan may be held personally liable to a plan participant for punitive damages or extra-contractual compensatory

relief for the improper or untimely processing of his claim has a particularly devastating impact upon such a plan. The trustees of the plan who serve as employer representatives do so more out of dedication to the industry than out of their self-interest or the special interests of their employers. The contractors and builders who participate in the plan number in the thousands, and the easy course for a contributing employer would be to let someone else undertake the burdens and responsibilities of representing the employers on the boards of trustees.

Ever since the first of the Northern California Funds were established in 1953 the employer associations that negotiate and renegotiate the collective bargaining agreements providing for the Funds have, as a general policy, appointed leading contractors or builders, or principal officers of leading contractor or builder firms, as employer trustees of the Funds. This policy has meant that those who, through their leadership positions, have been familiar with the interests and positions of the contributing employers, including those relating to collective bargaining, have been truly representative of such employers within the meaning of Section 302(c)(5) of the Labor-Management Relations Act. The policy has contributed substantially to the growth and well-being of the Funds, which now receive annually more than $350,000,000 in employer contributions, distribute more than $320,000,000 in benefits to participants and their dependents and beneficiaries and have accumulated more than $1,700,000,000 in reserves for future pension and other benefits. The policy, however, has become increasingly difficult to maintain because of the reluctance of potential appointees to expose themselves and their families to the risk of personal liability.

While the trustees can be provided with insurance against personal liability for extra-contractual compensatory relief, no insurance can be provided in California against liability for punitive damages. Further, and of more immediate concern to every trustee, is that a simple allegation and claim for punitive damages has been held by the federal courts to authorize an inquiry for discovery purposes into the net worth and personal finances of a defendant.

In *Hughes v. Groves* (W.D. Mo. 1969) 47 F.R.D. 52, the Court said (p. 55):

> "Defendant next objects to plaintiff Robert Hughes' interrogatory 7 and Margaret Hughes' interrogatory 18, both of which in substance ask for 'all assets and liabilities, jointly and severally * * * and gross earnings for last five (5) years.' Defendant objects that the question is premature. **He asserts that 'more than a simple allegation and claim for punitive damages should be necesary to allow plaintiffs to discover information about defendant's finances and 'how much he is to be punished.' " The law, however, is well settled and contrary to that position.** Information regarding damages is as discoverable as is that which pertains to liability. 4 Moore's Federal Practice § 26.18, p. 1229 (1968 ed.); *Sinclair Refining Co. v. Jenkins Petroleum Process Co.*, 289 U.S. 689, 53 S.Ct. 746, 77 L.Ed. 1440. **No prima facie showing in punitive damages is required to justify discovery."**[2]

See: *Miller v. Doctor's General Hospital* (W.D. Okla. 1977) 76 F.R.D. 136, 140; *Holliman v. Redman Development Corp.* (D.S.C. 1973) 61 F.R.D. 488, 491; *Coy v. Superior Court* (1962) 58 Cal.2d 210, 216-217, 23 Cal. Rptr. 393, 373 P.2d 457.

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[2]Emphasis is added throughout this brief unless otherwise noted.

Some of the adverse consequences of the ruling in *Hughes v. Graves, supra,* were expressed in *Richards v. Superior Court* (1978) 86 Cal.App.3d 265, 150 Cal. Rptr. 77, where Court said (p. 271):

> "Discovery seeking financial information by reason of a claim for punitive damages is one classic instance of the manner in which civil discovery is used to achieve a litigation advantage never contemplated when the methodology was introduced into pretrial procedure. **Causes of action for punitive damages have become very easy to allege.** (See, e.g., *Neal v. Farmers Insurance Exchange* (1978) 21 Cal.3d 910, 148 Cal. Rptr. 389, 582 P.2d 980.) Response to discovery seeking financial information places a severe burden on the responder. As a minimum, there is the time and expense necessary to the compilation of a complex mass of information unrelated to the substantive claim involved in the lawsuit and relevant only to the subject matter of a measure of damages which may never be awarded. In addition, there is usually the potential that untoward disclosure of the information obtained may in some way or other react adversely against the disclosing party for reasons totally unrelated to the lawsuit. The possibilities run all the way from greater exposure to the not so gentle solicitations of some charitable organizations **to the possibility of damage to the discloser in the competitive business arena.**"

See: Note, *Pretrial Discovery of Net Worth in Punitive Damage Cases* (1981) 54 So. Cal. L. Rev. 1141.

If the improper or untimely processing of a claim for benefits could expose a fiduciary of an ERISA plan to personal liability for punitive damages, the denial of such a claim could *a fortiori* expose the fiduciary to such liability. ERISA requires that the boards of trustees of the Northern California Funds assume responsibility for the granting or denial of claims to benefits from the Funds, and at practically every meeting of the boards of the Pension Funds and the Health and Welfare Funds particularly, the boards must decide appeals from the administrative denial of claims. ERISA also requires that the decisions on these appeals be solely in the interests of the participants and beneficiaries of the plans and in accordance with the documents and instruments governing the plans insofar as the documents and instruments are consistent with ERISA (ERISA § 404(a)(1), 29 U.S.C. § 1104(a)(1)).

The claims that have been denied have already been carefully screened administratively under these guidelines so that inevitably many of the appeals must be rejected. An individual trustee who has been required to participate in these difficult decisions and who knows that any disappointed claimant may file an action against him personally in a federal district court and by a simple allegation and claim for punitive damages obtain the right to inquire into his personal financial affairs could not be blamed if he resigned from his trusteeship, and a potential trustee could not be blamed for declining to serve under such unrealistic and unjust legal rules (see *Fentron Industries v. Shopmen's Pension Fund* (9th C.A. 1982) 674 F.2d 1300, 1305).

Further, the basis advanced for imposing personal liability upon the individual trustees, namely, the failure after Board review of a claim is first requested, to render a decision on the claim within the time periods prescribed by the Secretary of Labor would, in many situations, make a travesty of the claims review procedure in the context of a large multiemployer plan. The trustees have no control over the time when a claimant requests Board review of his

claim and claimants can, and frequently do, make such requests before their claims have been fully processed. The vast majority of claims either clearly qualify for benefits under the terms of the plan or clearly do not qualify, and are routinely granted or denied accordingly within the prescribed time periods. It is the marginal claim—the claim that does not qualify upon the evidence initially submitted but which might qualify if further evidence were obtained —that sometimes requires a Board decision to be delayed beyond the prescribed period. In these circumstances, under the holding of the Court of Appeals in this case, the Board's fiduciary duty to administer the plan in accordance with its terms would require that it deny the claim within the prescribed period in order to avoid imposing personal liability upon the Trustees for having failed to make a timely decision.

The interest of the Northern California Funds in this case is to acquaint the Court with the special concerns of multi-employer construction industry employee benefit plans and to urge the Court to reverse these unrealistic and unjust legal rules. In so doing they hope to preserve, for the benefit of the participants and beneficiaries, Funds which have been built up to their present importance over a period of 30 years, which have been well run for all of that period, and which Congress did not intend to cripple or destroy when it enacted ERISA.

SUMMARY OF ARGUMENT

The holding of the Court of Appeals that a plan participant may sue the fiduciary of the plan for punitive damages or extra-contractual compensatory relief because of the improper or untimely processing of his benefit claim was based on an uncritical and erroneous reading of the legislative history of ERISA. When that history is correctly read it compels the conclusion that Congress intended to limit the civil enforcement remedies provided by ERISA to the more flexible and less draconic remedies developed by courts of equity.

This conclusion is confirmed by the fact that Congress provided in ERISA for a claims review procedure and made plan fiduciaries primarily responsible for establishing and operating the procedure. Congress must have intended to protect the fiduciaries from harassment or intimidation in connection with the exercise of this responsibility. Further, the procedure was intended to provide an expeditious and relatively inexpensive method of resolving benefit disputes. Both of these objectives would be defeated by the complication, delay, expense, harassment and risk connected with the assertion and litigation of claims for punitive damages or extra-contractual compensatory relief.

ARGUMENT

Congress Did Not Intend by the Enactment of ERISA to Subject a Fiduciary of a Covered Employee Benefit Plan to an Action for Punitive Damages or Extra-Contractual Compensatory Relief by a Plan Participant Who Alleges that the Fiduciary Has Processed His Claim in an Improper or Untimely Manner or Has Arbitrarily and Capriciously Denied His Claim for Benefits.

The Court of Appeals, in ruling that a plan participant may sue the fiduciary of the plan for punitive damages or extra-contractual compensatory relief because of the alleged improper or untimely processing of his claim, relied upon statements in Congressional committee reports that the committees intended to provide both the Secretary of Labor and plan participants and beneficiaries with "the full range of legal and equitable remedies available in both state and federal courts" (722 F.2d 491). The last version of the bill which ultimately became ERISA to contain language supporting these sweeping statements, however, was H.R. 2 as passed by the Senate on March 4, 1974, which provided in Section 693 that "[c]ivil actions for appropriate relief, legal or equitable, to redress or restrain a breach of any responsibility, obligation, or duty of a fiduciary . . . may be brought by any participant or beneficiary of any employee benefit plan or fund subject to the Welfare and Pension Plans Disclosure Act in any court of competent jurisdiction, State or Federal, . . . (Legislature History of the Employee Retirement Income Security Act of 1974, Public Law 93-406, prepared by the Sub-Committee on Labor of the Committee on Labor and Public Welfare, United States Senate, April, 1976, Vol. III, pp. 3599, 3816-3817.[3]

[3]Hereafter referred to as "Legis. Hist."

The sweeping language of Section 693 was drastically changed in ERISA as finally enacted. The only action that ERISA permits to be brought in a State court is an action by a participant or beneficiary "to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his right to future benefits under the terms of the plan" (Section 502(a)(1)(B)). All other actions must be brought in the federal courts and actions by a participant or beneficiary or the Secretary of Labor to redress violations of the Act are expressly limited to actions to obtain injunctive "or other appropriate *equitable* relief" (Sections 502(a)(3) and (a)(5)).

The provisions of Section 502(a)(3) and (a)(5) make it impossible, we submit, to distill from the provisions of Section 502(a)(2) an intention on the part of Congress to provide to the Secretary and participants and beneficiaries the "full range of legal and equitable remedies available in both state and federal courts" which Section 693 of H.R. 2 would have provided. The only possible conclusion from the terms of the Act as passed is that Congress deliberately intended to limit the civil enforcement remedies provided by the Act to the more flexible and less draconic remedies developed by courts of equity.

This conclusion is confirmed by the legislative history of ERISA. ERISA § 503, 29 U.S.C. § 1133, and regulations issued pursuant to that Section, require that a plan establish a reasonable claims procedure which provides for a full and fair review by the plan fiduciary of a decision denying a claim. The genesis of this provision was explained in the Conference Report on H.R. 2, Rep. No. 93-

1280, 93d Cong., 2d Sess., at p. 328 (Legis. Hist., p. 4595) as follows:

> "*Benefit Claim Procedure.*—The bill as passed by the House contains no provisions providing for procedures for resolving disputes between the plan administrator and participants or beneficiaries. Under the bill as passed by the Senate each pension plan is required to establish a procedure for a review of disputes between the plan administrator and participants or beneficiaries and afford an opportunity for arbitration of any dispute. Under the conference agreement every employee benefit plan is required to provide adequate notice in writing to any participant or beneficiary whose claim for benefits under the plan has been denied, setting forth the specific reasons for denial written in a manner calculated to be understood by the participant. In addition, the plan administrator is required to afford a reasonable opportunity to any participant or beneficiary whose claim for benefits has been denied for a full and fair review of this decision by the plan administrator."

The purpose of the provision, and the reason for its final form, were explained by Senator Javits as follows (Legis. Hist., p. 4769):

> "The Senate bill provided that each plan was to incorporate a procedure for arbitration of benefit claim disputes between the plan and participants and beneficiaries. The House bill contained no comparable provision. **House conferees were opposed to the Senate provision on grounds it might be too costly to plans and a stimulant to frivolous benefit disputes, and at their insistence it was dropped in conference.** I regret this decision since I believe the Senate bill would have provided a relatively inexpensive way for the resolution of minor benefit disputes for the many participants and beneficiaries who lack the resources to pursue their claims through the courts. Nevertheless, I am encouraged that the conferees agreed to direct the Joint Pension Task Force to study the feasibility of this approach, and **by the acceptance of provisions contained in the original Williams-Javits bill that would require a full and fair claims procedure—Section 503—as well as the provisions authorizing the Secretary of Labor to enforce benefits denied in violation of law—Section 502(b).**"

In the light of this legislative history the Courts have construed Section 503 as requiring that a plan participant or beneficiary whose claim to benefits has been denied exhaust the plan's claims review procedure before resorting to the courts (*Amato v. Bernard* (9th C.A. 1980) 618 F.2d 559; *Challenger v. Local Union No. 1 of the International Bridge, Structural and Ornamental Ironworkers* (7th C.A. 1980) 619 F.2d 645; *Taylor v. Bakery & Confectionary Union & Industry International Welfare Fund* (E.D.N.C. 1978) 455 F. Supp. 816, 820).

In *Taylor, supra,* the Court said (455 F. Supp. at pp. 819-820):

> "An examination of the underlying ERISA policies, interpreted analogously to the development of federal law under LMRA § 301, leads the court to conclude that Congress intended a claimant to exhaust his interfund remedies before seeking federal court review (with two exceptions noted infra). First, Section 1133 of the Act specifically requires the establishment of claims procedures, and the Secretary of Labor, pursuant to 29 U.S.C. § 1135, has promulgated extensive guidelines to implement these procedures. **Much like the labor grievance system, this claim/appeals mechanism is de-**

signed to reduce frivolous claims, promote the consistent treatment of claims, and create a non-adversarial method of claims settlement. CF. Vaca v. Sipes, 386 U.S. 171, 191, 87 S.Ct. 903, 17 L.Ed.2d 842 (1967).

Tied to these inter-fund claims procedures was Congress' awareness of the potential costs of pension reform, and **it sought to 'strike a balance between providing meaningful reform and keeping costs within reasonable limits.'** [1974] U.S. Code Cong. & Admin. News, pp. 4670, 4682. Congress was particularly concerned with outlining a private insurance system that would operate efficiently, thereby increasing its acceptance and institution among American business. U. S. Code News, supra. **If claimants were allowed to litigate the validity of their claims before a final trustee decision was rendered, the costs of dispute settlement would increase markedly for employers.** Employees would also suffer financially because, rather than utilize a simple procedure which allows them to deal directly with their employer, they would have to employ an attorney and bear the costs of adversary litigation in the courts.

Finally, the broad managerial discretion granted trustees under the ERISA statutory provisions indicates **a Congressional intent that they be primarily responsible for establishing and operating the claims procedures.** See Hines v. Anchor Motor Freight, Inc. 424 U.S. 554, 562-64, 96 S.Ct. 1048, 47 L.Ed.2d 231 (1976) (LMRA § 301, grievance procedure contest)."

In *Amato, supra,* the Court cited with approval the reasoning of *Taylor* and then added (618 F.2d at pp. 567-568):

"Moreover, the trustees of covered benefit plans are granted broad fiduciary rights and responsibilites

under ERISA, sections 401 through 414, 29 U.S.C. §§ 1101-1114, and implementation of the exhaustion requirement will enhance their ability to expertly and efficiently manage their funds **by preventing premature judicial intervention in their decision-making processes.** The text of ERISA and the policies underlying that text, far from suggesting that Congress intended to abrogate the exhaustion requirement in the case of suits under ERISA or that sound policy would counsel its abrogation by the courts, suggest just the opposite.

Finally, a primary reason for the exhaustion requirements, here as elsewhere, is that prior **fully considered actions by pension plan trustees interpreting their plans and perhaps also further refining and defining the problem in given cases, may well assist the courts when they are called upon to resolve the controversies.** *Cf. Buzzard v. Local Lodge 1040 Int. Ass'n of Mach. & Aero. Wrkrs., supra,* 480 F.2d at 41."

And in *Challenger, supra,* the Court added (619 F.2d at p. 649):

In addition, we note that Congress intended fund trustees to have primary responsibility for claim processing, as evidenced by the specific requirement in § 503, 29 U.S.C. § 1133, of a claim and appeal procedure for every employee benefit plan. **To make every claim dispute into a federal case would undermine the claim procedure contemplated by the Act. It would also burden employee benefit funds with substantial expense.** *See Taylor v. Bakery & Confectionery Union & Industry International Welfare Fund,* 455 F.Supp. 816, 820 (E.D.N.C. 1978). We believe that Congress, in adopting ERISA, did not require or contemplate such a result."

Further emphasizing the importance of the trustees' decision-making process to the administration of ERISA, the Courts—including the Court of Appeals for the Ninth Circuit—have held that the final decision of the trustees on a benefit claim can be set aside in a court proceeding only if the plaintiff alleges and proves that the decision was arbitrary, capricious, made in bad faith, not supported by substantial evidence, or erroneous on a question of law (*Rehmar v. Smith* (9th CA 1976) 555 F.2d 1362, 1371; *Music v. Western Conference of Teamsters Pension Trust Fund* (9th CA 1983) 714 F.2d 413, 418). They have held, further, that where a claim to eligibility is involved, "[a] federal court is to focus on the evidence before the trustees at the time of their final decision and is not to hold a de novo factual hearing on the question of the applicant's eligibility," and that "[a]s a general matter the court should not resolve the eligibility question on the basis of evidence never presented to a pension fund's trustees but should remand to the trustees for a new determination" (*Wardle v. Central States, Southeast and Southwest Areas Pension Fund* (7th CA 1980) 627 F.2d 820, at p. 824; *Malhiot v. Southern California Retail Clerks Union* (9th CA 1984) 735 F.2d 1833, 1835).

Congress, having made plan fiduciaries primarily responsible for establishing and operating the claims procedures and deciding disputed questions of eligibility for benefits, must certainly have intended to protect those fiduciaries from harassment or intimidation in connection with the exercise of that responsibility. This Court has not hesitated to recognize and enforce such protection for decision-makers in comparable contexts and for comparable reasons (see *Butz v. Economu,* 438 U.S. 478, 511-517, 98 S.Ct. 2894, 2913-2916 (1978); *Briscoe v. Lahue,* 460 U.S. 325, 103 S.Ct.

1108, 1120 (1983); c.f *International Union, UAW v. Greyhound Lines, Inc.* (6th C.A. 1983) 701 F.2d 1181, 1187). The reasoning of these cases leads to the conclusion that Congress could not have intended to impose personal liability for punitive damages or extra-contractual compensatory relief upon plan fiduciaries for action taken in the operation of the claims procedure, since the threat of such liability disrupts the reasoned decision-making which Congress considered essential to ERISA. Protection from the threat of personal liability, and the harassment connected with suits to enforce such liability, promotes the interest of all plan participants and beneficiaries in the uniform and impartial application by plan fiduciaries of the terms of the plan, while the right of an individual participant or beneficary to sue for enforcement of his rights under the plan (ERISA § 502(a)(1)(B)) and to seek the assistance of the Secretary of Labor in enforcing participation, vesting and funding rights (ERISA § 502(b)), provides ample protection against abuse of the decision-making function in individual cases (*Cf. Nixon v. Fitzgerald,* 457 U.S. 731, 757, 102 S.Ct. 2690, 2706 (1983).

Further, the holding that fiduciaries may be held personally liable for punitive damages, even under the limited circumstances the Court of Appeals deemed "appropriate", inevitably complicates the court review of the decisions of plan fiduciaries and increases the time and expense of such review, thereby defeating one of the other important objectives of the claim review procedures. As noted above, in order to prevail in an action to secure court review of the decision of a plan fiduciary denying a claim to benefits, the plaintiff must allege and prove that the decision was arbitrary, capricious, made in bad faith, not supported by substantial evidence, or erroneous on a question of law. By

naming the fiduciary as a defendant individually and including in his complaint a prayer for punitive damages and an allegation that the fiduciary also acted "with actual malice or wanton indifference to [his] rights", plaintiff can pursue not only the merits of his claim for benefits but also discovery as to the personal financial resources of the fiduciary and the issue as to whether or not the fiduciary should be punished for having denied his claim. Thus, a process which was intended by Congress to provide an expeditious and relatively inexpensive method of resolving benefit disputes would be converted into costly, drawn-out, highly adversarial litigation which would include issues unrelated to the merits of the plaintiff's claim to plan benefits. We submit that both the terms of ERISA and the legislative history of the Act make clear that Congress did not intend such a result.

Finally, the conclusion of the Court of Appeals that the failure to render a decision on a benefit claim within the time limits prescribed by the Secretary of Labor subjects a plan fiduciary to personal liability for punitive damages or extra-contractual compensatory relief is not supported by the regulation on which the court relied. The consequences of such a failure are spelled out in the regulation, 29 C.F.R. § 2560.503-1, as follows: If a plan does not notify a claimant of the denial of his claim within the prescribed time limit for such notice, "the claim shall be deemed denied and the claimant shall be permitted to proceed to the review stage described in paragraph (g) of this section" (§ 2560.-503-1(e)(2)). If the decision of the trustees on review is not furnished to the claimant within the prescribed time limit for the decision, "the claim shall be deemed denied on review" (§ 2560.501-1(4)). At this point the claimant may

seek court review of the merits of his claim, but he need not do so, and it there is a possibility that continued review proceedings may result in the allowance of his claim, as happened in respondent's case, the normal claimant would not be likely to do so. In any event, the general rule is that the specification of one remedy excludes another (*Switchmen's Union of N.A. v. National Mediation Board,* 320 U.S. 297, 301, 64 S.Ct. 95), and nothing in the terms or the purpose of the regulation, or of ERISA § 503, justifies a departure from this rule.

CONCLUSION

Multiemployer ERISA plans are today beset with major problems—enforcement of withdrawal liability, hospital and medical cost containment, affirmative action, etc.—which require the attention, abilities and judgment of responsible leaders in the respective industries served by the plans. The addition to these problems of the intimidation and harassment inherent in the punitive damage remedy threatens to deprive the plans of the services of the fiduciaries who are best able to resolve the problems, and defeats the objective of ERISA to promote the growth and prosperity of covered plans. The holding of the Court of Appeals in this case should be reversed.

Respectfully submitted,

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